

STATE OF VERMONT

SUPERIOR COURT  
CHITTENDEN UNIT

CIVIL DIVISION  
Docket No. 810-9-19Cncv

MICHELLE ROZICH  
and RYAN MOLITOR,  
Plaintiffs

v.

CITIBANK, N.A.  
Defendant

) RECEIVED  
)  
) OCT 30 2019 VERMONT SUPERIOR  
) 5:19-CV-188 COURT  
) U.S. DISTRICT COURT  
) BURLINGTON, VT SEP 11 2019  
) 272284  
) CHITTENDEN UNIT  
)

COMPLAINT

Plaintiff Michelle Rozich and Plaintiff Ryan Molitor, by their attorneys, Gravel & Shea PC, hereby complain of Defendant and allege as follows:

Nature of Action

1. This is a civil action brought by Plaintiff Michelle Rozich ("Plaintiff Rozich") and Plaintiff Ryan Molitor ("Plaintiff Molitor") for conversion and consumer fraud.

Parties

2. Plaintiff Rozich is a resident of New York, New York who conducted real estate business in Vermont.

3. Plaintiff Molitor is a resident of New York, New York who conducted real estate business in Vermont.

4. Defendant is a national association and financial services firm with headquarters in New York, New York.

Facts

5. Josiah Allen Real Estate ("Josiah Allen") is a real estate agency with offices in Dorset and Manchester Village, Vermont. Once a property is under contract, Josiah Allen regularly provides wire transfer information to clients via e-mail in order to obtain their customary 10% contract value fee or a deposit regarding the same.

6. On or about August 23, 2018, John Doe #1 hacked the e-mail server of Josiah Allen.

7. John Doe #1 created special rules within Josiah Allen's real estate server designed to redirect e-mail messages from four specific clients with active real estate activity, including Plaintiff Rozich's e-mail address, with certain keywords, including "Transfer funds," "ACH," "wire transfer," "send check," "remittance," "account number" or "payment," to his personal e-mail address, "tarajagan1@gmail.com."

8. John Doe #1, posing as an agent or representative of Josiah Allen, then directly communicated with Josiah Allen's clients, including Plaintiff Rozich, and transmitted fraudulent wire transfer instructions to his personal bank account.

9. On September 12, 2018, Plaintiff Rozich received an e-mail from Josiah Allen's realtor Laura Beckwith regarding inspection and basic wire transfer information to Josiah Allen's T.D. Bank account pertaining to Plaintiff Rozich and Plaintiff Molitor's purchase of a property in Dorset, Vermont. Ms. Beckwith, Plaintiff Rozich and Plaintiff Molitor worked closely together over the coming days to demonstrate interest to the sellers and complete outstanding matters in the interest of a 30-day close.

10. On September 12, 2018, Plaintiff Rozich received another e-mail from Ms. Beckwith's secure dotloop e-mail requesting an electronic document signature, which Plaintiff Rozich completed on that day.

11. On September 13, 2018, in the same e-mail chain, Plaintiff Rozich received another e-mail from Ms. Beckwith requesting that Plaintiff Rozich use a Citibank account for the requested wire transfer in lieu of the account originally referenced in the September 12, 2018 e-mail.

12. On September 13, 2018, Plaintiff Rozich executed a wire transfer in the amount of \$53,800 (“the Funds”) from her Bank of America checking account ending in \*0127, jointly owned with Plaintiff Molitor, using the Citibank account information provided earlier that day via Ms. Beckwith’s e-mail.

13. On September 17, 2018, Plaintiff Rozich confirmed via e-mail to Ms. Beckwith that the Funds were cleared from her Bank of America account per her initiation of the wire transfer.

14. Josiah Allen had not yet received the requested Funds via wire transfer as of September 17, 2018. On the same day, Josiah Allen received a message from another client, who expressed confusion at receiving two wire transfer instructions to different bank accounts. Josiah Allen, through internal and police investigation, discovered that their e-mail server had been hacked and that the Citibank wire transfer information was fraudulent.

15. On September 17, 2018, Plaintiff Rozich contacted Bank of America and Plaintiff to report the Fraud.

16. On November 6, 2018, Bank of America provided a hold harmless agreement related to the return of the Funds.

17. Defendant Citibank demanded an indemnification agreement to release the Funds.

18. On June 14, 2019, Plaintiff Rozich and Plaintiff Molitor, through counsel, offered Defendant a model Complaint for Declaratory Relief to obtain a declaratory judgment regarding the ownership of the Funds.

19. On August 1, 2019, Plaintiff Rozich filed a complaint with the Consumer Financial Protection Bureau ("CFPB").

20. On August 15, 2019, Defendant responded to Plaintiffs request for the reimbursement of Funds and the CFPB complaint. Defendant explained that "We are unable to comply with Bank of America's request for the funds in exchange for a hold harmless agreement. In addition, . . . due to privacy laws, we require a subpoena in order to share account information and/or records. As such, we must respectfully deny your request for reimbursement."

21. Defendant has not yet returned the Funds to Plaintiff Rozich and Plaintiff Molitor.

COUNT I  
Conversion

22. Plaintiff realleges paragraphs 1 through 21.

23. Plaintiff Rozich and Plaintiff Molitor contend that they are entitled to the full amount of the Funds because the Funds were stolen by John Doe #1 through fraudulent misrepresentation and Plaintiffs were the victims of a fraudulent scheme.

24. Plaintiffs have repeatedly demanded the immediate return of the Funds, but Defendant failed and refused, and continues to fail and refuse, to return the Plaintiffs' property.

25. As a direct result of Defendant's conversion of the Funds, Defendant has benefited from the accrual of interest and Plaintiffs have expended time and legal fees in the pursuit of the converted property.

COUNT II

Breach of Consumer Fraud Act, 9 V.S.A. § 2453

26. Plaintiff realleges paragraphs 1 through 25.

27. The Vermont Consumer Fraud Act prohibits unfair acts and practices in commerce, including those acts or practices that cause or are likely to cause substantial injury to consumers or cannot be reasonably avoided by consumers.

28. Plaintiff Rozich and Plaintiff Molitor were the victims of a fraudulent scheme initiated by John Doe #1, who used a Defendant Citibank account.

29. Defendant's refusal to return Plaintiffs' Funds caused substantial monetary injury to Plaintiffs in the amount of the Funds, interest which may have accrued on the Funds from the date of the fraudulent scheme to present, and the loss of attorneys' fees and other costs in pursuit of the Funds.

30. Defendant's continued refusal to restore the Funds or file a lawsuit to determine the proper owner of the Funds without providing further explanation for the decision or additional options to obtain the Funds is an unfair practice in violation of the Consumer Fraud Act.

Claims for Relief

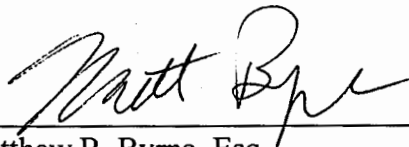
WHEREFORE, Plaintiff respectfully requests following relief:

- A. An award of damages.
- B. Interest and costs.
- C. Civil penalties as allowed by law for each violation of the Consumer Fraud Act.
- D. Other such further relief as this Court may deem just and equitable.

**JURY DEMAND**

**Plaintiffs demand trial by jury of all issues so triable.**

Dated: Burlington, Vermont  
September 11, 2019



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